STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 16, 2003

To: The Commission
(Meeting of April 17, 2003)

From: Alan LoFaso
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1734 (Assembly Committee on Utilities and Commerce) –**
Public Utilities: energy efficiency budgets

As Introduced March 5, 2003

Legislative Subcommittee Recommendation: Oppose.

Summary: This bill would alter the commission's statutory mandate regarding public goods charge (PGC) funded cost-effective energy efficiency programs to the exercise of regulatory oversight. This bill would also require utilities to submit budgets for energy efficiency (EE) programs six months prior to period they apply, and deem those budgets approved if the commission fails to act on the submitted budgets.

Analysis: Existing law, PU Code 399.4, mandates the CPUC to administer cost-effective energy efficiency programs.

Existing law, PU Code 381.1 (added by Chapter 838, Statutes of 2002 (AB 117)), requires the CPUC to establish policies and procedures by which any party may apply to become administrators of energy efficiency programs by July 15, 2003.

This bill would remove the commission's mandate to "administer" cost-effective energy efficiency programs, and instead require the commission "exercise regulatory oversight over" these programs.

This bill would also:

- Require electrical and gas corporations to submit energy efficiency program budgets at least six months prior to proposed expenditure.
- Require the commission to approve within six months budgets as submitted or with modifications by the commission.

- Deem approved any budgets not approved or modified by the commission within six months.
- Authorize electrical and gas corporations to submit an energy efficiency program budget using multiple year budgeting for any program.

The significance of changing the commission’s EE program role from that of “administer” to the “exercise of regulatory oversight” of these programs is not entirely clear.

Based on representations by the author, AB 1734 would apparently bar the commission from selecting non-utility EE programs and limit the potential outcomes of the commission’s OIR to examine future energy efficiency policies, administration and programs (R. 01-08-028). Pursuant to this rulemaking, the commission set aside $100 million of PGC gas and electric funds available for EE programs in 2002 and 2003 for non-utility programs. This amount constituted approximately 20% of the overall 2002 budget for EE programs. (D. 01-11-066.) As recently as January of this year, the commission expressed its desire “to make clear [its] continued commitment to third-party [non-investor-owned utility (IOU)] energy efficiency programs, both local and statewide.” (D. 03-01-038 (opinion ratifying process for commission consideration of 2003 energy efficiency programs).)

The second significant component of AB 1734 would require the commission to approve EE program budgets submitted by utilities within 6 months of their being submitted to the commission. Budgets would be approved automatically by statute, if the commission does not approve them by that deadline.

This provision is intended to address late approval of budgets by the commission. Although several budgets have been approved after the beginning of the year for which the budgets apply, the commission has approved bridge funding during each of those intervening periods between the beginning of the year and approval of budgets.

It is likely this provision could result in unsatisfactory review of budget proposals in a manner that might allow uneconomical programs to continue. The commission’s Energy Efficiency Policy Manual requires that the cost-effectiveness of each EE program be measured. These requirements serve the state’s policy goals of cost-effective energy savings and consumer demand reduction (see P.U. Code sec. 399.4). Automatic approval of budgets without thorough commission review would serve to undermine this policy goal.

Finally, AB 1734 grants authority to gas and electric utilities to use multiple year funding for any EE program. The commission has considered 2-year budgets for some EE programs. This provision, however, could be interpreted as a broad entitlement for utilities to choose budget cycles of more than two years, without regard for commission guidelines specifying 1-year, 2-year or longer cycles.

Read as a whole, the bill could be interpreted to automatically approve a multi-year budget submitted by a utility. A utility could apparently submit a budget for 5 years in the future, for example. The bill is unclear as to whether the commission's ability to modify the proposed budget would allow it to limit the number of years covered by the submitted budget. If the commission was not allowed to limit the time and it could not evaluate the proposed budget within the six month time period, several years of EE program funding would be automatically approved without review.

Legislative Staff Contact:

Reena Bajwa baj@cpuc.ca.gov
CPUC- OGA/DSP (916) 445-1453

Alan LoFaso, Legislative Director alo@cpuc.ca.gov
CPUC- OGA (916) 327-7788

Date: April 16, 2003

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Attachment

BILL LANGUAGE:

BILL NUMBER: AB 1734 INTRODUCED
BILL TEXT

INTRODUCED BY Committee on Utilities and Commerce (Reyes (Chair), Calderon, Canciamilla, Diaz, Jerome Horton, Levine, Nunez, and Ridley-Thomas)

MARCH 5, 2003

An act to amend and repeal Section 399.4 of, and to add Section 801 to, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1734, as introduced, Assembly Committee on Utilities and Commerce. Public utilities: energy efficiency budgets.

Under the Public Utilities Act, the Public Utilities Commission requires, until January 1, 2012, electrical corporations to identify a separate rate component to fund cost-effective energy efficiency and conservation activities. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing law requires specified electrical corporations to collect specific amounts to fund cost-effective energy efficiency and conservation activities.

This bill would require each electrical corporation and gas corporation to submit to the commission, an energy efficiency programs budget, at least 6 months prior to the proposed expenditure of the funds collected as a separate rate component to fund cost-effective energy efficiency and conservation activities. The bill would authorize each electrical corporation and gas corporation to include in the energy efficiency programs budget, their proposed expenditures under other specified programs the purposes of which include energy efficiency. The bill would authorize electrical corporations and gas corporations to use multiple year budgeting for any energy efficiency program and would require the commission to approve the budget, or order that it be modified within 6 months of its submission. The bill would make other technical changes. Because violation of an order, decision, or rule of the commission is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 399.4 of the Public Utilities Code, as added by Chapter 1050 of the Statutes of 2000, is repealed.

~~399.4. (a) (1) In order to ensure that prudent investments in energy efficiency continue to be made that produce cost-effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid, it is the policy of this state and the intent of the Legislature that the commission shall continue to administer cost-effective energy efficiency programs authorized pursuant to existing statutory authority.~~

~~(2) As used in this section, the term "energy efficiency" includes, but is not limited to, cost-effective activities to achieve peak load reduction that improve end-use efficiency, lower customers' bills, and reduce system needs.~~

~~(b) The commission, in evaluating energy efficiency investments under its existing statutory authorities, shall also ensure both of the following:~~

~~(1) That local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into program portfolio design and that local governments, community-based organizations, and energy efficiency service providers are encouraged to participate in program implementation where appropriate.~~

~~(2) That no energy efficiency funds are used to provide incentives for the purchase of new energy-efficient refrigerators.~~

SEC. 2. Section 399.4 of the Public Utilities Code, as added by Chapter 1051 of the Statutes of 2000, is amended to read:

399.4. (a) (1) In order to ensure that prudent investments in energy efficiency continue to be made that produce cost-effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid, it is the policy of this state and the intent of the Legislature that the commission shall continue to ~~administer~~ *exercise regulatory oversight of those public utility* cost-effective energy efficiency programs authorized pursuant to existing statutory authority.

(2) As used in this section, the term "energy efficiency" includes, but is not limited to, cost-effective activities to achieve peak load reduction that improve end-use efficiency, lower customers' bills, and reduce system needs.

(b) The commission, in evaluating energy efficiency investments under its existing statutory authorities, shall also ensure both of the following:

(1) That local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into program portfolio design and that local governments, community-based organizations, and energy efficiency service providers are encouraged to participate in program implementation where appropriate.

(2) That no energy efficiency funds are used to provide incentives for the purchase of new energy-efficient refrigerators.

SEC. 3. Section 801 is added to the Public Utilities Code, to read:

801. (a) Each electrical corporation and gas corporation shall submit an energy efficiency programs budget to the commission at least six months prior to proposed expenditure.

(b) The proposed energy efficiency programs budget shall include proposed expenditures for programs authorized pursuant to Sections 381, 399.4, and 399.8.

(c) The proposed energy efficiency programs budget may include proposed expenditures for programs authorized pursuant to Sections 327, 379.5, 382, 701.1, 701.6, 796, 890, 900, or any other program authorized by statute, by executive order, or by the commission for purposes that include energy efficiency.

(d) An electrical corporation or gas corporation may submit an energy efficiency programs budget that use multiple year budgeting for any energy efficiency program.

(e) The commission shall approve or order modifications to the energy efficiency budget within six months of submission, and if the commission fails to approve or order modifications within six months, the proposed budget shall be deemed approved.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.